

It is undisputed that on February 11, 1998, claimant fell, apparently tripping over a railroad tie, in the course of her duties for respondent. Claimant testified she injured her right knee and arm. Claimant later complained of pain in her left rib area and complained of a lump in the back of her neck. Respondent contends claimant suffered no injury and offers the opinion of Dr. Sergio Delgado to that effect. But Dr. Delgado's opinion relates to permanent physical injury. His report refers to the work-related injury but he finds no residual impairment. It is clear from the record, and the Board finds, that claimant suffered at least

a temporary injury to her knee and arm as a result of the fall at work. She went immediately to the nurse practitioner who gave her medication and an ice pack. She saw the nurse practitioner on several subsequent occasions and was later seen by several physicians, including two psychiatrists. The records from the visits to both the nurse practitioner and the later visits to physicians confirm at least a temporary injury.

Respondent also argues that it should not, in any event, be responsible for the psychiatric care ordered by the ALJ. Psychological and psychiatric injury is not compensable unless it is directly traceable to a physical injury. *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, 771 P.2d 557, rev. denied 245 Kan. 784 (1989). Respondent contends that even if claimant suffered a physical injury, the psychiatric problems are not directly traceable to that injury. Respondent offers the testimony of Dr. Eric A. Voth, a psychiatrist, to that effect. Claimant has offered the contrary opinion of Dr. Stephen E. Peterson, also a psychiatrist, that the psychiatric problems are traceable to the injury of February 11, 1998.

The Board has held in previous cases and holds here that whether a psychological or psychiatric injury is directly traceable to a physical injury is not a jurisdictional issue and is, therefore, not subject to review in an appeal from a preliminary hearing. K.S.A. 1997 Supp. 44-551 and K.S.A. 1997 Supp. 44-534a. In our view, this issue concerns the nature and extent of the disability and is a step removed from whether claimant suffered a compensable injury. The Board has, for this reason, declined to review the question at this stage of the proceedings. *Gilman v. Olathe Medical Center*, WCAB Docket No. 211,937 (June 1997).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the finding by Administrative Law Judge Brad E. Avery that claimant suffered accidental injury arising out of and in the course of employment is affirmed. The Board dismisses the appeal from the finding that claimant suffers psychiatric or psychological problems that are directly traceable to the physical injury. The Order entered by Administrative Law Judge Brad E. Avery on October 5, 1999, remains in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

c: George H. Pearson, Topeka, KS
Ronald J. Laskowski, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director